



May 9, 2000

Ms. Kristi LaRoe
Assistant District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196-0201

OR2000-1809

Dear Ms. LaRoe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135091.

The Tarrant County Sheriff's Department (the "department") received a request for records relating to the Tarrant County Jail commissary fund accounts. You have released the responsive information that the department has in its possession. You claim that the requested information "showing how the commissary fund money has been spent by Faith Restorative Justice Chaplaincy, Inc." ("FRJC") is not public information as the records belong to FRJC, a third-party, private, religious, non-profit corporation. On its own behalf, FRJC asserts that the information responsive to the request is not subject to the Public Information Act (the "Act") or, in the alternative, is protected by Government Code section 552.110. We have considered the submitted arguments.

The Act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499 (1988). Section 552.002 of the Government Code, however, defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987). *Cf.* Open Records Decision No. 499 (1988).

Section 351.0415 of the Local Government Code provides that the sheriff may operate or contract with another person to operate a commissary for the use of the prisoners committed to the county jail. Loc. Gov't Code § 351.0415(a). The sheriff may use the commissary proceeds to "fund, staff and equip a program addressing the social needs of the county

prisoners including an educational or recreational program and religious or rehabilitative counseling.” *Id.* § 351.0415(c)(1). Assistant Chief Deputy Sheriff Larry Hester explained in his affidavit submitted to this office that the department contracted with FRJC “to fund, staff, and equip a program addressing the social needs of the county prisoners, including religious or rehabilitative counseling.” The contract does not require the company to maintain the records at issue here or provide the department access to them.

In our opinion, the information created by FRJC is not “maintained” or prepared for the department and the department does not own or have access to this information. *See* Gov’t Code § 552.002 (definition of “public information” subject to Act). Because the department does not own or have access to information created and maintained by FRJC, the information is not the department’s “public information” under the Act. Thus, the department need not respond to this portion of the request.¹ The department has released those documents in its possession relating to its involvement in the contract.

Having concluded the department does not have additional information not already released that is “public information” and subject to the Act, we need not consider FRJC’s argument under Government Code section 552.110. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

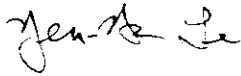
¹ At this time, we do not address whether FRJC is a governmental body pursuant to section 552.003 of the Government Code and subject to the Act. We reserve this issue for future consideration should the requestor make a request to FRJC for the information at issue. Should FRJC receive a request for the information and wish to withhold the information, FRJC must ask this office for a decision. At that time, FRJC should submit arguments explaining why it is not a governmental body under the Act or why the information is not subject to the Act, and it should assert any applicable exceptions to required public disclosure.

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/CHS/ljp

Ref: ID# 135091

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